

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRYAN DAVID STRAUSS,

No. 4:17-CV-1098

Plaintiff,

(Judge Brann)

v.

NANCY A. BERRYHILL,

*Acting Commissioner of Social Security,*

(Magistrate Judge Mehalchick)

Defendant.

**ORDER**

**JULY 12, 2018**

**BACKGROUND:**

Plaintiff filed a complaint in this Court on June 21, 2017, after being denied supplemental security income and disability insurance benefits.<sup>1</sup> On March 3, 2018, the Commissioner moved for a remand of the matter, to include final judgment in this action, for the Administrative Law Judge to further evaluate whether the Plaintiff's alcohol abuse was material to the finding of no disability.<sup>2</sup>

The Magistrate Judge, to whom this matter was jointly assigned, issued a report and recommendation on May 3, 2018, recommending that this Court take

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<sup>1</sup> ECF No. 1.

<sup>2</sup> ECF No. 16

the extraordinary approach of reversing the decision of the Commissioner and award benefits. I respectfully disagree with this recommendation.

The District Court can award benefits only when the administrative record of the case has been fully developed and when substantial evidence on the record as a whole indicates that the plaintiff is disabled and entitled to benefits.<sup>3</sup> Here, the Plaintiff acknowledges that the Administrative Law Judge did not fully develop the record, stating “in this case, the ALJ never mentioned SSR 13-2p [Evaluating Cases Involving Drug Addiction and Alcoholism] at all, and failed to follow its requirements.”<sup>4</sup>

Accordingly, the report and recommendation will be adopted in part; I will reverse the decision of the Commissioner, but without an immediate award of benefits. The Commissioner is granted the opportunity for a rehearing, pursuant to sentence four of 42 U.S.C. § 405(g).

**AND NOW, IT IS HEREBY ORDERED** that:

1. The Motion of the Commissioner of Social Security, March 7, 2018, ECF No. 16, to Remand the matter is **GRANTED**.

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<sup>3</sup> See *Gilliland v. Heckler*, 786 F.2d 178 (3d Cir. 1986); *Tenant v. Schweiker*, 682 F.2d 707, 710 (8th Cir. 1982).

<sup>4</sup> ECF No. 24 at 2.

2. The Report and Recommendation of Magistrate Judge Karoline Mehalchick, May 3, 2018, ECF No. 22, is **ADOPTED in part and REJECTED in part.**
3. The decision of the Commissioner of Social Security is **VACATED and REMANDED**.
4. Final Judgment is entered in favor of Plaintiff and against Defendant pursuant to Fed. R. Civ. P. 58 and sentence four of 42 U.S.C. § 405(g).
5. The clerk is directed to close the case file.

BY THE COURT:

*s/ Matthew W. Brann*  
Matthew W. Brann  
United States District Judge